IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

CRP.No. 1029 of 1997(A)

AA.2/1989 of APPELLATE AUTHORITY(LR), KANNUR
SM.56/1985 of LAND TRIBUNAL, KASARGOD

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REVISION PETITIONER/RESPONDENT/A PARTY:

K.RAMA NAIK, S/.O.K.NARAYANA NAIK,
HINDU, LANDHOLDER, RESIDING AT BARIKE,
KODLAMOGARU VILLAGE, P.O.KODLAMOGARU,
KASARAGOD TALUK AND DISTRICT.

BY ADV. SRI.D.KRISHNA PRASAD
SRI.D.KRISHNA PRASAD
SRI.D.NARENDRANATH
SRI.M.HARISHARMA

RESPONDENTS/APPELLANT/B PARTY AND STATE:

1. JAYALAKSHMI NARAYANA ALVA,KOTEKUNJA HOUSE,
MOGRAL PUTTUR VILLAGE, P.O.MOGRAL PUTTUR, KASARAGOD TALUK,
AND DISTRICT.

2. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY,
THIRUVANANTHAPURAM.

R1 BY ADV. SRI.K.G.GOURI SANKAR RAI

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R.RAMAN J.

C.R.P.No.1029 OF 1997

Dated this the 20th day of July, 2007

O R D E R

Petitioner is the tenant and the A party in a suo motu proceedings initiated by the Land Tribunal, Kasaragod. Proceedings were initiated to confer fixity of teunure on the petitioner/tenant as per the provisions of the Kerala Land Reforms Act. Notices were issued to both the parties. B party is the landlord (respondent herein). The case put forward by the petitioner herein was that his father obtained an oral lease in respect of the property in question measuring about 1acre 10 cents in R.S.No.4/1 of Koliyoor Village, Kasaragod and the petitioner obtained the same by succession and the oral tenancy set up was 40 years prior to the proceedings now initiated. The respondent disputed the tenancy claim of the petitioner. The petitioner was examined as PW-1 and PW-2 is the another independent witness. The respondent was examined as RW-1. Exts.C1 and C3 are reports of the Revenue Inspector and Ext.C2 is the plan. The Land Tribunal on a consideration of the materials on record, both oral and documentary, came to the conclusion that the petitioner has established his claim of tenancy and ordered accordingly. On appeal by the landlord the same was reversed

mainly on the basis of the additional evidence tendered by the respondent herein which are Exs.B1 to B4 land tax receipts. The Appellate Authority found that the inspection conducted by the Revenue Inspector was not in accordance with the tenancy rules with prior notice to the landlord. Therefore, the Appellate Authority did not give any wait to the report of the Revenue Inspector. The Appellate Authority however did not go into the oral evidence adduced by the parties. Exts.B1 to B4 relate to the present property in respect of which tax has been paid for the years 1962-63, 1965-1966, 1968-69 and 1969-70. But the Appellate Authority failed to note that the respondent herein had deposed while examined as RW-1 before the Tribunal that he has not paid any land tax in respect of the land in question. On the other hand, the petitioner contended that he had been paying the land tax; but he was unable to produce the land tax receipts. But the specific case of the petitioner is that he had been in continuous occupation of the tenanted premises and making valuable improvements thereon and he is a cultivating tenant. If at all the Appellate Authority placed reliance on Exts.B1 to B4, necessarily those documents ought to have been proved by examining somebody or recalling RW-1, so that his testimony to be decided in the cross-examination. I say so because in this case documents were produced along with the petition without examining anybody and the petitioner herein had filed a counter affidavit opposing the prayer for admission of these documents. Further no reliable material

is available to hold that tax receipts so produced relate to 1 acre 10 cents of land which is the property in question. Even according to the landlord, an extent of 6.44 acres of land belonged to him was occupied by three tenants. Revenue Inspector's report no doubt would support the case of the petitioner; but for any reason already stated by the Appellate Authority the Revenue Inspector's report was rejected and the proper course open was first to remand the matter to the Land Tribunal for fresh consideration after due notice to the parties. It was not done. In these circumstances, accepting Exts.B1 to B4 alone and reversing the order passed by the Land Tribunal and dismissing the claim of tenancy as resulted in manifest injustice to the petitioner and besides procedural irregularities. The judgment of the Appellate Authority does not show that he had considered the evidence already adduced before the Tribunal both oral and documentary and no attempt was made to re-appreciate the same.

2. In the result, I find that the judgment of the Appellate Authority is liable to be set aside. I do so. But that does not mean that the order of the Land Tribunal should also be upheld. The Revenue Inspector's report obtained in the case is not shown to be with due notice to the landlord. Since there was no documentary evidence available before the Land Tribunal, the entire case was rested on the oral testimony of both the parties and also based on the report of the Revenue Inspector.

3. In such circumstances, it is only appropriate that the matter may

be remitted to the Land Tribunal. Hence, the order of the Land Tribunal is also set aside. The matter is remitted to the Land Tribunal for fresh consideration in accordance with law and the Tribunal shall inspect the property through the Revenue Inspector, after due notice to the parties. It is open to the lst respondent to give additional evidence in support of Exts.B1 to B4 and make himself available to be cross-examined. In case RW-1 is not available for such purpose, it is open to the lst respondent to examine any other competent witness to prove Exs.B1 to B4. If either party wishes to adduce additional evidence, the Tribunal shall also permit the same. The Tribunal shall issue notice to the parties fixing a date for appearance.

In the result, C.R.P. is allowed.

P.R.RAMAN,
Judge.

kcv.

P.R.RAMAN, J.

C.R.P.NO.1029 OF 1997

O R D E R

20th July,2007